

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

FILED
BILLINGS, MT.
2011 APR 1 PM 3 15
PATRICK E. DICKSON
BY _____
DEPUTY CLERK

WILLIAM SWITZER,

Plaintiff,

vs.

**BUREAU OF INDIAN AFFAIRS
AND CROW TRIBAL POLICE,**

Defendants.

CV 11-30-BLG-RFC-CSO

**RECOMMENDATION AND ORDER TO
DENY MOTION TO PROCEED IN FORMA
PAUPERIS**

This matter is before the Court on Plaintiff William Switzer's Motion to Proceed in Forma Pauperis (*Court Doc. 1*) and a Department of Justice Standard Form 95 to present claims for damage, injury, or death. (*Court Doc. 2*).

The Court may permit indigent litigants to proceed in forma pauperis upon completion of a proper affidavit of indigency. See 28 U.S.C. § 1915(a). But the Court has broad discretion in denying an application to proceed in forma pauperis. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), cert. denied, 375 U.S. 845, 84 S.Ct. 97, 11 L.Ed.2d 72 (1963). "A district court may deny leave to proceed in forma pauperis at the outset if it appears from the face of the proposed

complaint that the action is frivolous or without merit." Tripati v. First Nat'l Bank & Trust, 821 F.2d 1368, 1370 (9th Cir. 1987).

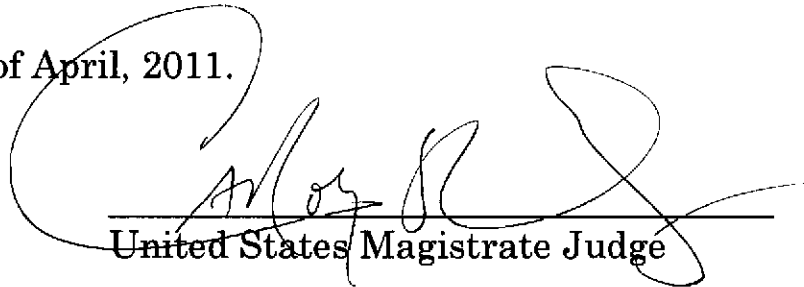
Standard Form 95 is used to present claims against the United States under the Federal Tort Claims Act for property damage, personal injury, or death allegedly caused by a federal employee's negligence or wrongful act or omission occurring within the scope of the employee's Federal employment. Any such claim must first be presented to the federal agency whose employee's conduct gave rise to the injury. 28 U.S.C. § 2675(a).

It appears Switzer is attempting to present a Federal Tort Claim but has not presented it to the appropriate agency. This Court is not the appropriate agency to present the claims listed in the administrative form. Switzer must first present his claims to the appropriate agency before bringing them before this Court. Therefore, the motion to proceed in forma pauperis should be denied.

While the Court ordinarily gives litigants an opportunity to pay the \$350.00 filing fee, it should not do so in this case where no claim has been presented to the Court.

Based on the foregoing, the Court **RECOMMENDS** that the following Order be issued by Judge Cebull.

DATED this 1st day of April, 2011.



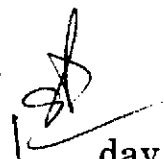
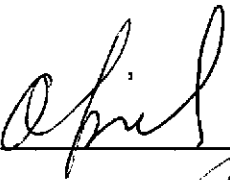
United States Magistrate Judge

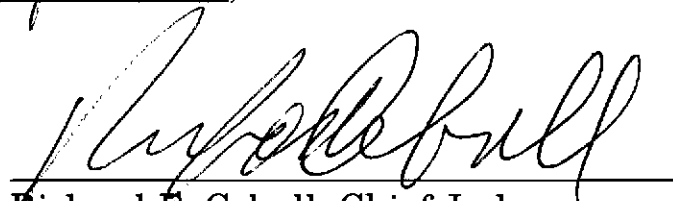
Based upon the above Recommendation by Judge Ostby, the Court issues the following:

ORDER

1. Switzer's motion to proceed in forma pauperis (*Court Doc. 1*) is **DENIED**.

2. Plaintiff's Complaint is **DISMISSED** and the Clerk of Court shall close the file.

DATED this  day of , 2011.



Richard F. Cebull, Chief Judge
United States District Court